REMARKS

I. Introduction

This amendment addresses the non-final Office Action mailed June 1, 2009. Claims 27-61 are presently pending. Claims 40-42 and 56-59 were previously withdrawn by the Examiner. Claims 27-39, 43-55, 60 and 61 stand rejected. Claims 27-29, 34, 36, 40, 41, 48, 50, 54, 60, and 61 have been amended. Claim 35 was cancelled. The amendment is supported by the original disclosure and does not add new matter.

Applicant requests reconsideration in light of the amendment and the following Remarks.

II. Restriction Requirement

Claims 40-42 depend from claim 27. Since as explained below, claim 27 is allowable rejoinder of claims 40-42 is respectfully requested.

Claims 57-59 depend from linking claim 48. Since, as explained below, claim 48 is allowable, rejoinder of claims 57-59 is respectfully requested.

In addition, Applicant maintains the disagreement with the Office Action's reasoning for the restriction. The Office's previous characterization of the claims is not correct. The interactive game recited in claim 48 is not limited to a lottery game. Neither is the game provided in claim 27.

In the most recent Office Action, at paragraph 4, it is alleged that because claim 48 has a preamble "A method of conducting the lottery" that the interactive game recited in claim 48 is limited to a lottery. This is a clear error and a misreading of the plain language of the claim. As an initial matter, Applicant notes that the Office must give the claim is broadest reasonable interpretation in light of the specification. See MPEP 2111.01. Applicant notes that the specification includes several example embodiments where the interactive games are skill games or depend on non-random events, such as sports results. While claim 48 does expressly claims a "method of conducting a lottery game", and claim 27 claims a system for providing such a game, in both cases, the recited instant ticket lottery game is in fact the "lottery game", recited in the preamble. However, both of these claims are "open" claims a "comprising" and nothing in the plain language of the claim restricts the interactive game to being a game of skill rather than a game of chance. Se MPEP 2111.03

Accordingly, withdrawal of the restriction requirement is respectfully requested.

III. Rejection of Claims 27-38 and 43-54, 60 and 61 Under 35 U.S.C. § 103(a) over Kaye in view of Roberts

Claims 27-38, 43-54, 60 and 61 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,569,082 ("Kaye") in view of U.S. Patent 5,772,510 ("Roberts"). Claims 27 and 48 are not rendered obvious by the proposed combination of Kaye and Roberts. As amended claim 27 recites:

> 27. (Currently amended) A lottery gaming system, comprising:
> **a preprinted instant win lottery ticket**, the lottery ticket including a ticket identifier, an interactive game information, an instant game information, and a removable covering concealing the instant game information;
> a lottery ticket dispenser configured to dispense the lottery ticket,
> **the lottery ticket dispenser including an input device configured to receive, prior to the lottery ticket being dispensed, an input indicating a player's choice between purchasing the lottery ticket as a hybrid instant lottery ticket that is also usable in an interactive Internet game and purchasing the lottery ticket without activating the lottery ticket for use in the interactive Internet game,**
> the lottery ticket dispenser configured, responsive to receiving the input indicating the player's choice to purchase the lottery ticket without activating the lottery ticket for use in the interactive Internet game, to dispense the lottery ticket without activating the lottery ticket for use in the interactive Internet game;
> a central computer system in communication with the lottery ticket dispenser and configured to receive from the lottery ticket dispenser an indication that the player has chosen to purchase the lottery ticket for use in the interactive Internet game**, the central computer system configured to, responsive to the receipt of the indication, to activate the lottery ticket for use in the interactive Internet game**; and
> a computing device remote from and in communication with the central computer system via the Internet, the computing device configured to receive the interactive game information from the lottery ticket**, the computing device further configured, responsive to receipt of an indication that the lottery ticket was activated for use in the interactive Internet game, to be utilized by the player to play the interactive Internet game based at least in part on the interactive game information.**

Claim 48 recites similar features in method form. Applicant incorporates all the arguments made in the prior office action responses. Applicant has amended the claim to change the "interactive game" to an "interactive Internet game". The current Office Action, at paragraph 6 alleges that Roberts is not used to show an interactive game. However, in paragraph 16, the Office Action

again expressly relies on Roberts as allegedly teaching "a player's choice between purchasing the lottery ticket as a hybrid instant lottery ticket **that is also usable in an interactive game** and purchasing the lottery ticket without activating the lottery ticket for use in the interactive game." In the previous Office Action, the Office expressly took the position that Robert's scratch game is an interactive game. That position also seems to be implied again in the paragraph 16discussion of Roberts of the present Office Action.

Even though it is not agreed that Robert's teaches the recited interactive game, Claim 27 and 48 have been further amended to recited that **the interactive game** is an Internet game, and not a scratch off ticket game. Accordingly, combining Roberts with Kaye does not produce the claimed invention. Claims 27 and 48 have also been amended to recite that the lottery ticket is **a preprinted instant win lottery ticket**, further distinguishing these tickets from the partially printed instant lottery tickets of the cited Robert reference.

Moreover, there is no reasoned explanation given in the present Office Action as to why Roberts and Kaye would be combined in the way described in the Office Action. Even if Roberts arguably generally describes choosing to add an optional supplemental game to an instant lottery game ticket, it does not teach or suggest adding an optional interactive Internet game to an instant lottery ticket. Paragraph 17 purports to provide a reason to make the proposed combination. But paragraph 17 is completely devoid of any reasoning as to why instant lottery tickets should be combined with Kaye's game. "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness". *KSR v. Teleflex*, 550 U.S. __, 82 USPQ2d at 1396. Merely because certain references can be combined or modified does not render the resultant combination obvious unless the prior art renders such a combination desirable so as to be predictable. If the desirability of the combination cannot be found in the prior art, then a rationale must be provided that is reasoned from knowledge generally available to one of ordinary skill in the art or based on established scientific principles. See M.P.E.P. § 2144. At least a convincing line of reasoning must be presented to support the rejection. *Ex Parte Clapp*, 227 U.S.P.Q. 972 (Bd. Pat. App. & Inter. 1985). It is respectfully submitted that the Examiner has not provided any convincing line of reasoning for making the proposed combination. The reasoning in the rejection is at best a mere hindsight reconstruction unsupported by evidence.

Moreover, in addition to the arguments made against this proposed combination of Kaye and Roberts in the previous response, Applicant previously added a recitation to claim 27 that expressly recites the computing device is configured to provide access to the interactive game responsive **to an indication of whether the lottery ticket was activated to provide access to the interactive Internet game.** This feature is not in Kaye, and is not provided by Roberts, which has nothing to do with computer-based interactive games whatsoever. This further distinguishes Robert's scratch-off game (which the previous Office Action characterizes as the interactive game), because the claim recites a computer in the play of the interactive Internet game, not scratching off a ticket. While at paragraph 7 of the present Office action, it is asserted that Kaye "is all about a computing device that display and [sic] interactive game", Applicant respectfully submits that Kay is completely silent as to testing whether an instant lottery ticket was activated to provide access to an interactive Internet game.

Dependent claims 28-38 and 43-47, and 49-54 and 60-61 should also be patentable over Kaye & Roberts for similar reasons.

Separately and independently, with respect to claim 28 and 48, neither Kaye nor Roberts teach or suggest printing interactive game information on an instant win lottery ticket responsive to an indication the player has chosen to purchase the instant win lottery ticket for use in an interactive Internet game. Kaye 3:4-12, cited in the Office Action as allegedly teaching this feature, cannot teach or suggest this feature, particularly since Kaye does not teach or suggest ***using instant win lottery tickets that a player may selectively choose to activate for use in an interactive Internet game***. In the discussion in paragraph 18 simply reads both the instant lottery ticket, and the selective activation features out of claim 28 and 48.

Separately and independently, with respect to claim 29 and 49, neither Kaye nor Roberts teach or suggest a reader ***in the ticket dispenser*** configured to read the ticket identifier from the lottery ticket prior to the ticket being activated for use in the interactive Internet game. Kaye is silent as to this feature. Applicant notes that the current Office Action expressly indicates the Roberts is not being relied on for the interactive game, as discussed above, so it is impossible that Roberts teaches anything related to activating for use in an interactive Internet game. The cited section of Roberts, 4:7-21 has nothing whatsoever to do with interactive Internet games of any sort, and therefore cannot supply this missing feature.

It is therefore respectfully submitted that claim 27, and its dependent claims 28-38 and 60, and claim 48, and its dependent claims 49 to 54 and 61, are patentable over Kaye in view of Roberts. Withdrawal of the rejection is respectfully requested.

III. Rejection of Claims 39 Under 35 U.S.C. § 103(a)

Claim 39 was rejected under 35 U.S.C. § 103(a) over Kaye in view of U.S. Patent 6,497,408 ("Walker"). It is respectfully submitted that proposed combination of Kaye and Walker does not render obvious claim 39 for at least the following reasons.

Claims 39 depends from claim 27 and therefore should be allowable for at least the same reasons as those given above for claim 27. Moreover, the Office Action admits that Kaye does not teach or suggest all the features of Applicant's claim 27. Walker is not put forward as correcting and does not correct the defects of Kaye as a reference with respect to claim 27. Accordingly, Kaye combined with Walker does not teach all the features of claim 27, or its child claim 39. Claim 39 should therefore be allowable over the proposed combination of references.

Applicant's claim 39 has a feature of "a computing device remote from and in communication with the central computer system, the computing device configured to receive the interactive game information from the lottery ticket, the computing device further configured to be utilized by the player to play the interactive game based at least in part on the interactive game information" where the computing device is "a handheld device". While Walker generally describes that a handheld device may be used in some lottery contexts, it neither teaches nor describes a handheld device that provides an interactive Internet game based on a code read from **a preprinted instant lottery ticket**. In fact, Walker's various games do not appear to use a ticket at all. The Office Action, to the extent it is understood, does not explain, and the proposed combination is not believed to teach, how combining the "non-portable lottery generating device of Kaye" with the portable device of Walker, yields all the claimed feature of Applicant's claim 39.

Accordingly, since the proposed combination of Kaye and Walker does not disclose or suggest all of the features of either claim 27, or of its dependent claim 39, claim 39 is patentable over the proposed combination of Kaye and Walker.

IV. Rejection of Claims 55 and 56 Under 35 U.S.C. § 103(a)

Claims 55 and 56 were rejected under 35 U.S.C. § 103(a) over Kaye in view of U.S. Patent 5,158,293 ("Mullins"). It is respectfully submitted that the proposed combination of Kaye and Mullins does not render claims 55 or 56 obvious for at least the following reasons.

Claims 55 and 56 depend from claim 48, and therefore should be allowable for at least the same reasons as those given above for claim 48. Also, as admitted in the Office Action, Kaye does not teach or suggest all the features of claim 48. Mullins is not put forward as teaching, and does not teach, the features of claim 48 missing from the Kaye reference that were discussed previously.

Separately and independently from the arguments made above for its parent claim, claim 55 recites "providing the interactive game information ***on the removable covering***", e.g., on a peel off or pull off layer concealing the instant game information. As discussed previously, the interactive game information is information used to play an interactive game using a computing device. Mullins neither teaches nor suggests providing information used to play an interactive game using a computing device, and certainly does not suggest providing such information on a removable covering for an instant game.

Moreover, claim 55 recites "the receiving at least a portion of the interactive game information from the ticket at the computing device occurs **after** the tender of the lottery ticket, the interactive game information being provided by the player from removable covering." The only covering described in Mullins is a scratch-off or rub-off. Thus, the player in Mullins will not be left with any cover having game play information once they play the instant win game ticket. Accordingly, once Mullins' ticket is tendered for redemption, Mullins' player is without the information printed on Mullin's scratch-off area. Thus, even if Mullins arguably had the required information on the scratch-off region, which it does not, it would be inoperative for use in a game operating according to Applicant's claim 56. Thus, claim 56 should be allowable for this additional reason.

Applicant notes that, in the discussion in paragraph 10 of the present Office Action, it is purported that Mullins is only relied upon for having information printed on the removable covering. However, resolving the factual inquiry as to the scope and contents of the prior art requires the consideration of the reference as a whole; the reference cannot be relied upon "only to show" some feature or features disembodied from the rest of the disclosure.

Here, if Mullins were combined with Kaye in attempt to produce the invention claimed in claim 56, the resulting combination would be completely inoperative – because Mullins only teaches a scratch coating. Thus when the coating is removed, any code on the coating would be rendered unusable. Accordingly, the proposed combination does would not lead an ordinary artisan to Applicant's claim 56.

Since neither Mullins, nor Kaye, nor their combination, teach or suggest all the features of Applicant's claim 55 and 56. These claims are therefore not obvious over the proposed combination.

CONCLUSION

In light of the foregoing, it is respectfully submitted that all of the presently pending claims are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited. While no additional fee is considered to be due, the Office is hereby authorized to charge any fees, which may arise out of the filing of this paper, or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to the deposit account of **K&L Gates LLP,** Deposit Account No. **080570**.

The Examiner is invited to contact the undersigned at the telephone number below to discuss any matter concerning this application.

Respectfully submitted,

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